



Publisher of Consumer Reports

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U.S. Department of Transportation
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Re: Docket Number: NHTSA-2001-8677; Notice 1

**COMMENTS OF CONSUMERS UNION
to the
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
on
EARLY WARNING REPORTING REQUIREMENTS**

I. Introduction and General Background

Consumers Union,¹ publisher of *Consumer Reports* magazine, offers these comments in response to NHTSA's Advanced Notice of Proposed Rulemaking (ANPRM) for implementing the "early warning reporting requirements" of the Transportation Recall Enhancement, Accountability and Documentation Act (TREAD) of 2000. The TREAD Act was born out of Congress's and the public's widespread concern about deaths and injuries caused by tire treads delaminating at high speeds from specific models of Firestone tires that were on primarily Ford

¹ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with approximately 4.5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

Explorers, America's most popular sport utility vehicle. This hazard pattern was exacerbated by the discovery that the companies involved kept the facts of these tragedies from the public and NHTSA for a long time.

One of the most sobering discoveries coming out of lengthy Congressional hearings on the Firestone tire failures last fall was the dearth of information the National Highway Traffic Safety Administration (NHTSA) had received from Ford and Firestone. The TREAD Act was Congress' response to the myriad problems uncovered during the Firestone recall, and makes clear NHTSA's authority to gather critical safety-related information at the beginning stages of potential problems, with the goal of addressing the problem early, thereby saving lives and preventing injuries. TREAD also addresses NHTSA's need to receive safety-related information about products manufactured or sold abroad that are substantially similar to those sold in United States (US).

Congress and consumers alike were shocked upon learning that during the months prior to the recall of Firestone tires in the US, Ford had conducted several "consumer satisfaction" campaigns abroad to address the very safety problem, tread separations, US motorists were experiencing.

We are hopeful that the final early warning requirements maximize NHTSA's authority to gather in an orderly and usable fashion information about cars and automotive products that could present safety hazards.

II. Who Is Covered by the New Reporting Requirements

We agree with NHTSA that the agency's rule should cover vehicles produced outside the US by foreign manufacturers and imported by their US subsidiaries (eg., Mercedes-Benz passenger cars manufactured in Germany by DaimlerChrysler and imported by Mercedes-Benz

USA, Inc.). We also support NHTSA's inclination to require reporting of defects in vehicles that are not sold in the US, per se, but are counterparts to vehicles sold here. Though they may not be identical to their US counterparts, reporting requirements should apply to those that are similar enough that it is likely that defects in these vehicles will also be found in their US counterparts. Likewise, we support subjecting any product safety information about these vehicles to the agency's early warning requirements.

Motor vehicle equipment manufacturers

The ANPRM notes that there is a "wide range of equipment manufacturers," with 14,000 items of original equipment in a "contemporary passenger car," such that NHTSA is "considering whether it would be appropriate to have different requirements applicable to different types of equipment manufacturers." The rationale offered is that "some items of motor vehicle equipment rarely, if ever, develop a safety-related defect," though the ANPRM notes here that, "[N]either the TREAD Act nor its legislative history evidence a Congressional intent to exclude any manufacturer of motor vehicle equipment from the early warning reporting requirements."

In offering "alternative approaches that we might adopt with respect to reporting related to equipment," the proposal says the agency is considering an "incremental approach" to reporting about equipment problems, initially requiring reports only about items that have had safety-related defects reported in the past five years (including tires, child restraint systems, fuel tanks, air bags and related components such as sensors, original and replacement equipment manufacturers of seat belt), followed at some later point after the agency has had experience with the reporting requirements by reporting about equipment items directly covered by the FMVSS (such as brake hoses, lighting equipment, tires, brake fluids, retreaded tires, glazing, seat belt

assemblies, child restraint systems, etc), and followed finally by subsequent extension of reporting requirements to all manufacturers of components that a vehicle manufacturer uses in complying with federal crash-avoidance and some crash-protection and post-crash standards (discs, rotors, brake lining).

Finally, the ANPRM notes the agency is considering extending the reporting to problems related to seats, seat backs, and their attachments because of the frequent recalls of these items in the past 5 years, and fuel systems because fuel system parts, hoses, fuel lines and connectors are frequently the subject of recall campaigns.

While we understand NHTSA's desire to limit the safety reports it receives given the thousands of component parts in every vehicle, we disagree with the attempt to require reporting only on specific categories of components and parts. It is all but impossible to predict with certainty which components and parts may cause "safety-related" problems. Further, some important safety related parts are not covered by a safety standard, notably side air bags or booster seats, and we believe safety-related defects in these accessories are obvious examples of problems that should be reported to the agency. Yet absent actual deaths from defects in these products, under NHTSA's proposed scheme, such safety-related defects may not get reported.

Moreover, we understand that at least one manufacturer has a "critical product problem review group" whose job it is to review product problems when they reach an internally set threshold. This process is in place inside the headquarters of the automaker, and perhaps others. The automaker looks at product problems without regard to the category of the product. NHTSA should request this type of information from automakers, with a description of all problems discussed at these meetings, and the information could be shared with the agency, ideally with relatively little additional paperwork by the automakers.

Where NHTSA's hierarchy of safety-related parts or components may be more appropriate is in setting up a threshold number of safety-related reports that triggers reporting to NHTSA. For example, if there are 5 or more safety-related problems in a product that is within one of the three categories of equipment, parts or components that the ANPRM sets out as most closely related to safety concerns, that could trigger a report to the agency. If a defect is reported in an accessory or part that falls outside these three categories, perhaps a higher number of safety related problems might trigger a report.

III. What Information and Data Should Be Reported

Reporting Serious Injuries or Deaths

We support NHTSA's intent to require manufacturers to provide data on all claims for serious injuries and deaths. CU believes that the ANPRM's proposed use of the Abbreviated Injury Scale (AIS) ranking injury severity from 1 to 7, with 1 being minor, 2 moderate, 3 serious, 6 representing maximum severity, and 7 representing "injured unknown severity," makes sense, but only insofar as it applies to the triggering of reports. One report of serious injury or death (injuries of AIS 3 and above) should generate the reporting requirement; perhaps 10 reports of minor injuries (AIS 1) and 5 reports of moderate injury (AIS 2) should generate a report.

If claims presented to manufacturers do not have sufficient information to be classified using the AIS criteria, manufacturers should be required to review claims as they are received and attempt to determine whether they involve serious injuries for the purposes of getting important safety-related information to NHTSA.

Manufacturer Records

Our understanding is that manufacturers regularly review adjustment or warranty data to assess performance of products in the field. Again, the agency proposal suggests a hierarchy in

reporting warranty data based on systems, parts, and components that are particularly safety-related. (Included here are parts/components that were the most frequent subjects of recall campaigns: fuel systems, brakes, and suspensions.) We believe a better approach is to require reports on any systems, parts and components that show up in manufacturers' data bases as having safety-related defects, and set a threshold number of such reports that will trigger the obligation to report to NHTSA.

CU believes that any threshold system for reporting product safety problems should be based on a specific number of claims, not on a percentage. We believe that using percentages will reduce the effectiveness of reporting safety-related information because so many vehicles, parts and components are produced in mass quantities. In our view, a percentage of production would thwart the intent of the TREAD Act to enable NHTSA to identify safety problems and defects early before they become widespread. CU also supports standardizing warranty information reported to NHTSA, because of the potential volume of such reports. We recommend the agency develop a coding system, which manufacturers will be required to use when reporting. This will enable NHTSA to have a workable, useable system of accepting and analyzing standardized warranty information.

We would suggest that in the category of warranties and safety-related claims that when the number of customer claims/warranty claims (not resulting in lawsuits) reaches 15 on the same or substantially similar vehicle part or component subsystems, a report to NHTSA should be initiated, including a computerized summary of customer complaints/warranty claims and adjustment records prepared for management decision-making processes, including graphs.

We agree with NHTSA, however, that in some categories of products where critical safety components are involved, such as seat belt buckles or child restraint tethers, for example, the threshold for triggering a report should be much lower. We suggest 5 or fewer.

Remedy Failure

CU believes that NHTSA should be provided reports of remedy failures within a short period of time, no longer than 2 weeks, of when the manufacturer has determined internally that a remedy has not been effective.

Lawsuits

We suggest that NHTSA require from manufacturers on a monthly basis a listing of cases in which an alleged defect has led to three or more lawsuits. Manufacturers should send a computer printout of those lawsuits listing the alleged defect, model year of vehicle, tire or component, as well as listing:

- a) the nature of the injury
- b) venue
- c) information about the plaintiff
- d) names of lawyers representing both plaintiff and defendant
- e) the name and number of the case
- f) VIN on vehicle
- g) specific component information if component-related, eg., production date, DOT# for tires, serial #, etc.

Consumer complaint or claim?

We agree with NHTSA's inclination to construe any consumer communication with a manufacturer requesting restitution for an injury or property damage as a "claim" and not a mere

customer complaint. The ANPRM asks for guidance in identifying whether a claim is safety related; we would rely on NHTSA's experience to propose its own guidelines. Where there is a question, we urge the agency to err on the side of safety, which we hope is the current agency practice.

Submission of facts and analysis leading to recalls, customer satisfaction campaigns, etc.

The TREAD Act requires that manufacturers provide information about "customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment." We support NHTSA's broad interpretation of this provision, and agree that the agency should require, in addition to these reports, the submission of the facts and analysis that led to the manufacturer's decision to issue the campaign or recall.

Changes to components and service parts/redesign

From a safety perspective, it is extremely important that the agency receive redesign information. Given the frequency of redesigns for both safety and non-safety reasons, however, we recommend that NHTSA limit redesign information to those made in response to situations where field reports show safety-related problems. NHTSA should request information on any corrective actions and implementation dates of such actions; that information would be useful in tracking changes intended to improve or eliminate claim issues.

Field Reports

Our understanding is that each auto manufacturer already collects the following "field reports:"

- a) dealer reported problems
- b) lawsuits

- c) warranty claims
- d) direct customer complaints
- e) special investigations (could also be classified “internal investigations”)
- f) insurance database materials

CU believes that the safety-related field report information listed above, which should already be organized in a format that is understandable by the auto companies, ought to be shared with NHTSA on a regular basis, monthly, quarterly or periodically, depending on the category of product or information being collected by NHTSA. To the extent automobile equipment manufacturers keep detailed field reports, they too should share the information with the NHTSA on a regular basis. NHTSA’s questions to manufacturers about how they organize their product defect information will undoubtedly help the agency in determining what kind of records are being kept at present and how manufacturers can improve gathering and analyzing product safety information about their products.

Fuel Leaks, Fires and Rollovers

We support the ANPRM’s suggested requirement that manufacturers provide information on fuel leaks, fires and rollovers separate from other information. We understand that at least one manufacturer already segregates out and reviews data specifically about crashes involving any of these three factors. Perhaps others do as well, so that providing this information to NHTSA would not be difficult to do.

Reporting defects in substantially similar or identical vehicles and equipment sold in foreign countries

Congress very explicitly stated its intention in the TREAD Act to require manufacturers selling products in foreign countries that are “substantially similar” or identical to a motor

vehicle or motor vehicle equipment offered for sale in the United States, to report any “possible defect” to NHTSA. The bill requires reporting of defects or other product safety problems that occur in foreign countries in 2 sections of the legislation. See Sections 301669(m)(30(C), and 30166(m)(3)(A), respectively.

We recommend one small change in the defining a motor vehicle that is “substantially similar:” Instead of “same platform or family of engines ” we suggest “same or similar platform or family of engines.” We think that will avoid debates about what the “same” means while carrying out the intent of Congress.

Rental fleets

We recommend that NHTSA gather information from rental car companies for obvious reasons. They purchase large fleets of vehicles, and those vehicles are driven many miles in a short period of time and receive regular service. Rental fleets could well provide a useful source of early warning data about problems with vehicles and vehicle components.

IV. When Should Information Be Reported

CU agrees with NHTSA’s suggestion that any manufacturer of a motor vehicle or motor vehicle equipment should be required to report to NHTSA within 2 weeks of receipt of information alleging or demonstrating that a fatality has occurred, but we would add “or serious injury” after the word “fatality.”

Reporting should be acceptable with nonfatal claims or warranty data pertaining to the categories the ANPRM enumerates as “certain types of motor vehicles equipment that require more frequent reporting than others,” including school buses, emergency vehicles, child restraints, and automatic restraint systems. But once again we urge the agency to make reporting

less dependent on categories of motor vehicles or motor vehicle equipment, than on reporting when a specific threshold of incidents is reached.

The ANPRM's suggestion that other information, including aggregate statistical data, be reported on a quarterly basis seems reasonable. We differ, however, about quarterly reporting of safety-related warranty claims or claims/lawsuits alleging fires. As noted above, we urge the agency to require reporting of these kinds of claims when a threshold number of the claims is reached.

V. How Should Information Be Reported?

CU endorses the ANPRM's statement that "early warning provisions contemplate that manufacturers must do more than merely provide raw information and data." We believe that the TREAD Act was passed in the spirit of giving NHTSA the power to uncover and help reduce or eliminate automotive product safety hazards before people are injured or killed. NHTSA serves as the federal safety monitor for motorists traveling on our roads and highways. We believe that after public and Congressional outrage about unsafe tires on rollover-prone vehicles which lead to the passage of TREAD, Congress expects auto makers and auto equipment makers to do more than deliver boxes of raw data to NHTSA's doorstep. We hope and expect that automobile manufacturers and equipment manufacturers know that the data they provide must be organized and analyzed to enable NHTSA to do its job. We recommend that NHTSA make such responsibility clear in its final regulations.

We agree with the ANPRM that NHTSA has been given the authority to request collated and aggregated information by vehicle make, model, model year, and component system, broken down by failure or fault codes. We recommend that NHTSA also require that VINs be supplied.

We believe that data is only as good as the input. If inputted correctly and in a format that is useable, the data will be very useful.

VI. How NHTSA Might Handle and Utilize Early Warning Information Reported To It

On the issue of what constitutes “possession” of information that is subject to the new early warning reporting requirements, we agree that the colloquy in the *Congressional Record* between Congressman Markey and Congressman Tauzin just a few days prior to the bill’s becoming law provides clarification for the agency, with Mr. Markey stating, “Concern has been expressed that this provision not become a loophole for unscrupulous manufacturers who might be willing to destroy a record in order to demonstrate that it is no longer in its possession. Would [Mr. Tauzin] agree that it is in [NHTSA’s] discretion to require a manufacturer to maintain records that are in fact in the manufacturer’s possession and that it would be a violation of such a requirement to destroy such a record?” Mr. Tauzin responded, “The gentleman is again correct.”

That colloquy gives NHTSA the green light, we believe, to interpret “possession” to mean information not only in the actual possession of a manufacturer, but also constructive possession and ultimate control of information, such as information in foreign countries, or information possessed by outside counsel or consultants. The colloquy also underscores that any manufacturer that destroyed information so as to avoid having it in its “possession” would be subject to prosecution for violating the law.

Disclosure

We are encouraged to read that NHTSA feels that section 30166(m)(4)(C) related to releasing public safety information to the public will have “almost no impact.” Indeed, we would urge the agency to take its direction from President Clinton’s words, uttered when he signed the

legislation: The new early warning requirements of the [TREAD] Act directs NHTSA to “implement the information disclosure requirements of the TREAD Act in a manner that assures maximum public availability of information.”

While it is true, as the ANPRM states, that the “TREAD Act does not affect the right of a manufacturer to ask for a determination that information it may report to NHTSA is confidential,” CU believes that manufacturers too often ask, and NHTSA too easily grants, the companies’ right to keep confidential documents pertaining to safety. As NHTSA contemplates whether to grant FOIA requests in the future, we urge the agency to be mindful of the public’s and Congress’ anger last year at learning that life-saving information about Firestone tire failures on Ford Explorers was kept confidential. The public deserves more, not less, information about hazardous products, and NHTSA can play a positive role in insuring that this information is made more readily available.

VII. Periodic Review

We urge NHTSA to review its defect information-gathering procedures at least once every two years, not once every 4 years, as the ANPRM suggests.

Respectfully Submitted,

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